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CC: DD/EBS

May 9, 1986

J. Pierce Myers
Deputy General Counsel
Committee on Post Office & Civil Service
309 Cannon House Office Building
House of Representatives
Washington, D.C. 20510

Dear Pierce:

Thank you for sending us your latest draft provision from the retirement legislation providing for CIA administration of subchapter III of chapter 83 of Title 5 as it applies to CIA employees (FERS draft, p. 105, "Amendment to Section 8347"; copy attached). We were a bit surprised to see that it was an extract from a draft document we have not seen before.

The "April 25, 1986 Initial Discussion Draft" of the intelligence provisions, which we were given to review, handled the same issue a bit differently (copy of relevant provision attached).

In the PO&CS version you sent us, the preambular language of paragraph 8347(n)(1) contains the following phrase which does not appear in the corresponding place in the April 25 draft: "in a manner consistent with the administration of this subchapter by the Office" [OPM]. Although we think this phrase is unnecessary, we see no great difficulty in including it if you think it appropriate, as the shift of administration of retirement programs to CIA with respect to CIA employees is intended solely to improve the security of intelligence activities and is not intended in any way to affect the substantive retirement rights of CIA employees. Thus, CIA employees will receive the same treatment under the retirement systems applicable to them as non-CIA federal employees subject to the same systems receive; the only difference is that CIA administrative personnel will handle the system as it applies to CIA employees while OPM administrative personnel handle the system as it applies to non-CIA employees.

In the PO&CS version you sent us, the preambular language of paragraph 8347(n)(1) does not contain the following phrase which does appear in the corresponding place in the April 25 draft: "to the extent considered appropriate by such Director" [Director of Central Intelligence (DCI)]. This phrase is an important one, and should be included in the preambular language for two reasons. First, CIA probably will not be prepared to assume abruptly upon enactment of the new retirement legislation a number of aspects of administration of subchapter III of chapter 83 as it applies to CIA

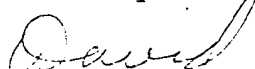
employees. A smooth transition from OPM to CIA of administration as it applies to CIA employees may require time. Second, CIA and OPM may find, after some practical experience under the new retirement administration arrangements, that some minor aspects of administration of subchapter III of chapter 83 as it applies to CIA employees, that involve no security implications, should remain with OPM. Specifying that CIA assumes the administration of chapter 83 for CIA employees to the extent the DCI finds appropriate allows for a smooth transition of administrative responsibility from OPM to CIA and allows for readjustment later if experience shows that readjustment is advisable.

In the PO&CS version you sent us, proposed paragraph 8347(n)(1) contains subparagraphs (A) - (D) specifying particular OPM functions which are transferred to CIA with respect to CIA employees, and a subparagraph (E) which allows the transfer of any other OPM functions to CIA with respect to CIA employees if the DCI, with OPM concurrence, finds it appropriate. We prefer the formulation contained in the April 25 draft which simply and clearly provides that CIA may assume all responsibility for administering subchapter III of subchapter 83 as it applies to CIA employees. This achieves clearly and effectively the security improvement goal which is a primary concern of the five intelligence committee conferees. However, if your formulation is used, then at a minimum two items should be changed. The provision should include, as one of the specifically enumerated functions, that the DCI may authorize and direct disbursements from the Civil Service Retirement Fund, as that will be necessary to achieve the security improvement goal. The provision should also be altered so that subparagraph (E) requires only consultation and coordination with OPM -- not Director, OPM approval -- for CIA to assume non-enumerated functions as to CIA employees, or else OPM resistance at some time in the future could hinder achievement of the security improvement goal.

In the PO&CS version you sent us, paragraph 8347(n)(2) provides that the Director, OPM may furnish information and services to the DCI on the DCI's request as necessary for CIA administration of subchapter III of chapter 83. The April 25 draft contained the same language as your draft, except that it provided that the Director, OPM shall provide the information and services as determined necessary by the DCI. The mandatory language in the April 25 draft should be preserved. In addition to contributing to CIA efficiency in carrying out the provision and achieving the security improvement goal, the mandatory language would minimize the likelihood that, if the CIA and the OPM some day get into an administrative tussle, CIA employees covered by subchapter III of chapter 83 would suffer while CIA and OPM negotiate a solution.

I hope our comments are helpful.

Sincerely,



David S. Addington
Counsel, Subcommittee on Legislation

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File: Supplemental

S 5716

CONGRESSIONAL RECORD — SENATE

May 8, 1986

Five of the eight commissioners expressed dissatisfaction with the draft report. The chairman of the commission, Clarence M. Pendleton Jr., strongly supported it.

CRITICISM OF WHITE HOUSE

Mr. Pendleton said the Reagan Administration was doing "mayhem to the Constitution" by endorsing programs that set aside specified percentages of money or work for minority-owned businesses. He said he was "upset and disappointed with the White House" for reaffirming its support of such programs on Thursday.

"This Administration has to make up its mind whether it wants opportunity for all or preferences for some, and it has to stop speaking with a double voice and a double meaning," he said.

Albert R. Brashear, a White House spokesman, said he had no comment on Mr. Pendleton's remarks.

By a vote of 5 to 3, the commission defeated a motion to reject the report outright. Then, after impassioned debate, it voted by the same margin to send the report back to the staff to be rewritten. No deadline was set for completion of the next draft.

Voting in the majority on both motions were Mr. Pendleton, Morris B. Abram, Esther Gonzalez-Arroyo Buckley, John H. Bunzel and Robert A. Destro. The three commissioners who wanted to scrap the report were Mary Frances Berry, Blandina Cardenas Ramirez and Francis S. Guess.

The draft report said there was "rampant corruption" in these programs. Mr. Bunzel, a senior research fellow at Stanford's Hoover Institution on War, Revolution and Peace, said: "I don't know what 'rampant' means. I do understand corruption. But I would like some further evidence as to precisely who believes there is that kind of corruption, where is it, to what degree, of what kind."

Mr. Abram, the vice chairman of the commission, joined Mr. Pendleton in defending the report. "Set-asides are nothing more than Government granted monopolies, increasing costs, increasing taxes for all of us, and especially a burden on the poor, black, white and brown," Mr. Abram said.

Also, Mr. Abram said that set-asides were "unworkable and un-American" and often made no sense. "What advantage needs to be conferred upon a Japanese or a Korean in our country, or upon a Cuban?" he asked.

Mr. Destro, an assistant professor of law at Catholic University here, described the draft report as "superficial." The set-aside programs are supposed to focus on people who are "economically and socially disadvantaged," he said, and the Government should not "equate disadvantage with skin color, language or national origin."

DECISION TO PRODUCE REPORT

Mr. Guess, the Tennessee State Commissioner of Labor, said he could not understand why the staff had drafted the 96-page report because the members of the Civil Rights Commission had never received a formal "project proposal" from the staff and had not voted explicitly to authorize such a study. He said the commission and its staff tended "to play fast and loose" with the agency's procedures.

J. Al Latham Jr., the staff director of the commission, said there had been no irregularities in the drafting of the report. At a meeting of the panel last November, he said, "four commissioners expressed a desire" to adopt a statement on issues discussed at a conference held by the agency in March 1985. The conference dealt with affirmative action and set-asides.

The set-aside programs are operated under laws passed by Congress and under executive orders signed by Presidents

Nixon, Carter and Reagan. To suspend the programs would require action by Congress and the President.

Two of the major set-aside programs are run by the Small Business Administration and the Transportation Department. In a letter to the Civil Rights Commission this week, Wilfredo J. Gonzalez, associate administrator of the small business agency, said, "We are concerned with the lack of accuracy and objectivity" in portions of the report relating to his agency.

Just before the end of today's meeting, Mr. Pendleton said it was "a blatant outright lie" for anyone to suggest that he had once tried to set up a minority business enterprise to take advantage of a Federal set-aside program. Representative Parren J. Mitchell, Democrat of Maryland, made such a suggestion on Thursday at a news conference, where he criticized the draft report.

SENATE RESOLUTION 403—RELATIVE TO SAFEGUARDING PAY AND RETIREMENT FOR NEW FEDERAL EMPLOYEES

Mr. WARNER (for himself and Mr. TRIBLE) submitted the following resolution; which was referred to the Committee on Governmental Affairs.

S. RES. 403

Resolved, That it is the sense of the Senate that, upon the enactment of a law establishing a new retirement system for officers and employees of the Federal Government who would be subject to the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 if such Act had been extended with respect to Government service performed during the period beginning May 1, 1986, and ending on the effective date of such law, the Government should refund to each such officer or employee an amount equal to the excess of—

(1) the amount deducted and withheld from the pay of the officer or employee for such service under section 8334(a)(1) of title 5, United States Code, or any other provision of law that requires a deduction to be made and withheld from the pay of the officer or employee as a contribution to a retirement system for Federal Government officers and employees, over

(2) the amount that would have been deducted and withheld from the pay of the officer or employee for that service under such Act if the Act had been so extended.

Mr. WARNER. Mr. President, I rise today to offer a resolution expressing the sense of the Senate that the 300,000 Federal employees hired since January 1, 1984, will not be held responsible for both the full 7.05 percent FICA tax and the standard 7 percent civil service retirement system [CSRS] contribution.

As those of my colleagues tracking the new supplemental Federal retirement plan are aware, Congress has been involved in a face-off with the Office of Management and Budget [OMB] on the final design of the program.

At stake is the work of more than 2 years in careful formulation and drafting of the most beneficial and cost-effective plan possible for new Federal employees.

Also at stake, and perhaps more important as a matter of timeliness, is the pending implementation of full FICA and CSRS withholding for new

employees, a total of 14.5 percent of their pay.

Since January of 1984, new Federal employees have been asked to make only a minimal 1.3 percent contribution to the Federal retirement program.

This special provision has been in place to allow new employees to earn retirement credit without unduly burdening them during the design period of the new supplemental plan.

After a series of extensions since the first of the year, this interim retirement contribution agreement expired on May 1, 1986.

OMB has asked for a new 30-day extension for continued negotiations, but civil service policymakers in both Houses of Congress have agreed that the time for negotiations is over.

We have worked hard to gain support for and refine the new supplemental plan and feel that no further concessions should be made.

If necessary, a pay period will go forward with dual withholding in force.

This is something no one wants, but it may have to take place to focus attention on the issue.

Indeed, I have already heard from a large number of my constituents, stating what a hardship this may work on their closely accounted household budgets.

I have tried over and over to convey to them that dual withholding, if it goes into effect, will be for the short term only.

Congress needs the support of the new employees to gain the long-term benefit of the new retirement plan.

Once an agreement has been reached between Congress and the administration, a new extension should be approved retroactive to May 1, thus restoring the 1.3-percent interim Federal retirement contribution.

Due to the growing concern of the new employees, however, I felt that it was necessary to go on record with our assurance that they will be made whole for purposes of refunding any extraordinary payments.

I am pleased to be joined in this effort by Congressmen FRANK WOLF and STAN PARRIS, true friends of Federal employees, who are introducing the House version of the resolution.

In the Senate, my Virginia colleague, Senator PAUL TRIBLE is joining as an original cosponsor.

As civil service advocates, we welcome the support of all other concerned Members of Congress in sending this signal of support and assurance to new Federal employees.

SENATE RESOLUTION 404—DESIGNATING THE OFFICIAL U.S. REPRESENTATIVE TO THE TRICENTENARY CELEBRATION OF THE GLORIOUS REVOLUTION

Mr. WARNER (for himself and Mr. TRIBLE) submitted the following reso-